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IN THE

# Supreme Court of the United States

JANUARY TERM, 1964

No. 491

J. C. GULLEY,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

## PETITION FOR A REHEARING

SAMUEL POSNER,
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J. C. Gulley respectfully petitions this Court for a rehearing herein upon substantial grounds. Said grounds were not presented heretofore because no occasion for urging them appeared until the brief for the United States in opposition to petitioner's petition for a Writ of Certiorari was filed by the Solicitor General.

## ARGUMENT

Petitioner respectfully asserts that the Solicitor General's reliance upon *United States v. Marpes*, 198 F.2d 186, 189, certiorari denied 344 U.S. 876, and *United States v. Crawford*, 195 F.2d 472, 474-475, and *Gordon v. United States*, 164 F.2d 855, 858-859 in support of his argument that there was substantial evidence that the stolen tires in the possession of the petitioner had a value of more than $100.00 was clearly erroneous and misleading inasmuch as the cases cited and relied upon by the Solicitor General failed to substantiate his conclusions.

The cases relied upon by the Solicitor General are readily distinguishable from the case at bar.

In the case of *Gordon v. United States, supra*, in addition to testimony that the insured was paid $4600.00 which was $1500.00 less than the loss claimed by the insured, there was expert testimony that the value of the stolen jewelry to the ultimate consumer was approximately $15,000.00.

In the case of *United States v. Marpes, supra*, the shipping documents showed a shipment of 400 cartons weighing 9043 pounds, half of which was stolen. The carrier placed a "released value" of 50c per pound on the merchandise which meant that the carrier's liability was $4500.00. Freight charges alone were in excess of $100.00.

In the case of *United States v. Crawford, supra*, an invoice was produced showing the price of the rifles to be $55.85 each. There was testimony that one, Cumberland, who stole the rifles sold eleven of them to the defendant who actually carried the rifles away from Crawford's home.

None of these cases cited by the Solicitor General are analogous to the present case where the sole testimony concerning value was the fact that an insurance claim for the loss of 16 tires was paid. There was no invoice showing the value of the tires. There was no expert testimony or any testimony as to the value of each of the tires. None of the tires were offered into evidence so that the jury itself could determine the value of the tires.

In no Circuit Court of Appeals in any District in the United States has the payment of an insurance claim been held sufficient evidence of value upon which to base a conviction. Nor has the value placed upon stolen goods by a defendant himself been sufficient proof of value to sustain a conviction.

Furthermore the evidence in this case showed possession by the petitioner of only *four* tires which witnesses claimed they placed in petitioner's automobile. There was no evidence whatsoever to substantiate possession of more than said four tires and no testimony was offered as to the value of said four tires.

## CONCLUSION

Petitioner's conviction of having bought, received and possessed goods from interstate commerce of a value of more than $100.00 cannot be sustained in the light of a total absence of competent evidence to establish the value of the articles stolen.

The cases relied upon by the Solicitor General are distinguishable from the instant case and failed to substantiate the Solicitor General's conclusion that value had been proved in the instant case. This Petition for Rehearing should be considered inasmuch as the brief of the Solicitor

General to which petitioner has heretofore had no opportunity to reply, might be misleading in its reliance upon cases which fail to substantiate his conclusions. A rehearing of the original petition for a Writ of Certiorari should, therefore, be granted.

Respectfully submitted,

SAMUEL POSNER,
*Attorney for Petitioner.*
712 Penobsbcot Building,
Detroit 26, Michigan.

Dated: Detroit, Michigan,
December 31, 1963.

## CERTIFICATE OF COUNSEL

I, Samuel Posner, attorney for the petitioner named in the foregoing Petition for Rehearing, do certify that said petition is presented in good faith and not for delay and that petition is restricted to the grounds above specified.

SAMUEL POSNER,
*Attorney for Petitioner.*

Dated: Detroit, Michigan,
December 31, 1963.